

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-31213-2022

Date of Decision: 16.03.2023

Ajaypal Singh @ Ajay**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Ankit Kharbanda, Advocate for the petitioner

Mr. Amish Sharma, AAG, Punjab
(assisted by ASI Jagdeep Singh)

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Section 439 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is seeking regular bail in FIR No.0038 dated 21.01.2022 under Sections 363, 366-A, 376 & 34 of Indian Penal Code, 1860 (for short 'IPC') and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') registered at Police Station Islamabad, Amritsar.

2. The case of the prosecution is that father of the prosecutrix lodged a complaint with police alleging that on 17.01.2022 at about 10:00 PM, his wife and daughters slept in a room and he along with his son slept in a separate room. On 18.01.2022, he woke up and found that his daughter was not in the bed. They tried to search, however, could not trace her. He is of the firm opinion that his daughter has been enticed away by Gurpreet

Singh alias Gopi. During the course of investigation, Gurpreet Singh alias Gopi disclosed that petitioner provided to them a room in a hotel where he is working.

3. Learned counsel for the petitioner, *inter alia* contends that prosecutrix, complainant and mother of the complainant stand examined and they have turned hostile. The petitioner was not named in the FIR and there is no allegation of rape against him. There is only allegation of abetment of offence. The petitioner is in custody since 25.02.2022 and he is not involved in any other offence. The petitioner has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of District Amritsar. The petitioner has deep roots in the society. There is no possibility of flee from justice.

4. Custody certificate dated 17.10.2022 is taken on record. Registry is directed to tag the same at appropriate place.

5. Learned State Counsel, on instructions from ASI Jagdeep Singh, submits that police report has already been filed and charges stand framed. He further submits that out of 27 witnesses, 3 have already been examined which includes the prosecutrix and complainant. He is unable to controvert the fact that prosecutrix and her parents stand turned hostile.

6. In the case in hand, prosecutrix and her parents stand examined and they have turned hostile. The petitioner is in custody since 25.02.2022 and he is not involved in any other offence. There is no allegation of rape against the petitioner and he is charged only for providing accommodation

to main accused and prosecutrix. There are 27 prosecution witnesses and till date only 3 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future. As prosecution has right to arrest, investigate the matter and restrain an accused from manipulating or winning over witnesses, similarly accused in view of Article 21 of the Constitution of India has right to defend himself and put forth his stand which cannot be possible while in custody. The prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of petitioner being flee from justice or tampering the evidences or winning over/threatening the witnesses;

7. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by Trial Court/Illaqa/Duty Magistrate concerned.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

16.03.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>